

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local)	
Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier Compensation)	
Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208

FURTHER NOTICE OF PROPOSED RULEMAKING

**REPLY COMMENTS OF
ALEXICON TELECOMMUNICATIONS CONSULTING
ON SECTIONS XVII L-R (INTERCARRIER COMPENSATION)**

Alexicon Telecommunications Consulting (“Alexicon”) hereby submits its Reply Comments to the Federal Communications Commission (“FCC” or “Commission”) in response to the Commission’s Further Notice of Proposed Rulemaking (“FNPRM,” or “Proposal”).¹ In Section XVII, L-R of the Further Notice of Proposed Rulemaking, the Commission seeks comment on issues related to Intercarrier Compensation Reform adopted concurrently with the FNPRM.²

EXECUTIVE SUMMARY

The Commission’s decisions and proposals in this docket, while certainly transformative, have the real possibility of harming the very goal for which this proceeding is seeking to reach – broadband for all Americans. An analysis of comments received in the initial round reveal a broad and varied opposition to further harm done in the name of intercarrier compensation reform. It is Alexicon’s opinion that the Commission must halt further reform until the results of the changes adopted, court appeals, petitions for reconsideration, clarification, and waiver, and various other open items are known.

Decisions made, and not made, and the unknown results of issues still under consideration by the Commission, have caused indelible harm to rural local exchange carriers and their efforts to bring, and continue to provide, quality broadband services to all customers. Not only is the future of ubiquitous broadband in rural areas in jeopardy, but customers will now be asked to pay more for what quite likely will be less, or at the most the same, service. This irrational result of the ICC/USF Order must be altered before the promise of broadband for all dwindles and fades away.

I. IT IS PREMATURE TO ADOPT A TRANSITION TO BILL AND KEEP FOR THE REMAINING ACCESS RATE ELEMENTS AT THIS TIME

¹ Adopted October 27, 2011 and Released November 18, 2011.

² Report and Order and Further Notice of Proposed Rulemaking In the Matter of Connect America Fund, WC Docket No. 10-90; A National Broadband Plan for Our Future, GN Docket No. 09-51; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135; High-Cost Universal Service Support, WC Docket No. 05-337; Developing an Unified Intercarrier Compensation Regime, CC Docket No. 01-92; Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Lifeline and Link-Up, WC Docket No. 03-109; and Universal Service Reform – Mobility Fund, WT Docket No. 10-208, released November 18, 2011. (*ICC/USF Order*)

In the ICC/USF Order, the Commission determined that a bill and keep regime for all intercarrier compensation is the best way to advance “the Commission’s policy goals and the public interest, driving greater efficiency in the operation of telecommunications networks.”³ For rural, rate-of-return (RoR) regulated carriers, the transition to bill and keep is not final until 7/1/2020 and relates only to terminating switched access rates.⁴ The issue raised for comment in the FNPRM relates to how to complete the transition to bill and keep for originating access rates, both interstate and intrastate.⁵

Alexicon agrees with many commenters who state further transition to bill and keep for originating access should be delayed or abandoned.⁶ Regardless of the fact that the Commission’s authority to require changes to interstate or intrastate originating access rates is still in doubt⁷, the Commission’s decisions regarding intrastate and interstate terminating rates moving to bill and keep must be given time to take place, and time during which the impact can be accurately measured. Based on the Commission’s USF and ICC decisions and proposals, all reform roads lead to the customer – not necessarily in the form of continuing and additional broadband, but most certainly in the form of higher local rates. The extent of the ICC/USF Order’s impact, good or bad, must be first determined prior to any further attempts at reform.

The adverse impacts on consumers as a result of the ICC/USF Order are many and varied. Rural LEC residential customers can expect, in many cases, annual rate increases of \$0.50 designed by the Commission to recover the initial transition of terminating access rates to bill and keep, for a total of \$3.00 over a six-year period.⁸ Some rural LEC customers can expect local rate increases in order for the RLEC to achieve the national-average local rate transition levels the Commission adopted, or the RLEC risks losing all high-cost support.⁹ Many RLECs are facing substantial

³ ICC/USF Order at 741

⁴ *Id.* at 801

⁵ *Id.* at 1297

⁶ See Initial Comments of NECA, NTCA, OPASTCO, and WTA (Rural Associations) at 4; Comments of Moss Adams at 5; Comments of New Mexico Exchange Carrier Group and Mescalero Apache Telecom at 3; Comments of NASUCA, Maine Office of Public Advocate, New Jersey Division of Rate Counsel, and TURN (Consumer Advocates) at 4

⁷ See Rural Association Initial Comments at 9 and footnote 18

⁸ ICC/USF Order at 852. The Commission mentions an annual estimated average Access Replacement Charge (ARC) increase of \$0.20, but this estimate includes the price cap carriers as well as rural LECs. Alexicon anticipates the RLEC annual ARC increase to be close to the maximum \$0.50.

⁹ See ICC/USF Order at 234

reductions in high cost support through operation of either the 100% overlap rule¹⁰ or the reimbursable limits on certain operating and capital expenditures¹¹, or both. Couple these reductions in high cost support for RLECs with the unknown nature of the long-term broadband-focused Connect America Fund (CAF), and many RLECs face the distinct prospect of doing, and being asked to do, significantly more with much less. In many, if not all, cases, the only recourse the typical RLEC will have is through higher local and broadband rates. This result - higher consumer rates, with the same or lesser service quality and questionable ongoing provision and expansion of broadband services, is antithetical to the goals as contained in the National Broadband Plan.

Based on the likely, if not yet firmly established, outcomes of the Commission's decisions thus far in this proceeding as described above, the prudent and reasonable course of action at this point is to delay any further implementation of the bill and keep regime. This will allow the Commission, the industry, and more importantly, the consumers to gauge the impacts of USF and ICC reforms already underway, and will let the numerous court appeals and petitions for reconsideration run their collective course.

II. THE COMMISSION SHOULD NOT ADOPT ANY ARBITRARY PHASE OUT FOR ICC CAF

In the FNPRM, the Commission raises the issue of whether the Access Recovery Charge (ARC) and/or CAF support for ICC reductions should be subject to a defined phase-out and eventually eliminated altogether.¹² The Commission reasons that five years, the time frame under which the RoR carrier Baseline amounts decrease by 5% annually, is sufficient time to allow RoR carriers "to adjust and transition away from the current system."¹³ The Commission then asks if, after year 5 of the ICC CAF process, a 10% annual reduction is a reasonable way to hasten the end of access revenue reduction-based support.¹⁴

¹⁰ *Id.* at 280

¹¹ *Id.* at 210. See also FNPRM at 1081 and Appendix H.

¹² *Id.* at 1328

¹³ *Id.* at 1329

¹⁴ *Id.*

Alexicon agrees with the Rural Association's comments that it is highly premature to contemplate a defined sunset date for ICC CAF received by RoR carriers, or to adopt an accelerated reduction in RoR carrier Eligible Recovery after year 5.¹⁵ While the Commission lauds itself for adopting the Eligible Recovery mechanism and making RoR intercarrier compensation revenue streams more certain and predictable¹⁶, nothing is mentioned indicating that the revenue streams resulting from the ICC/USF Order changes are *sufficient* so as to allow RoR carriers to carry out the National Broadband Plan goals. In fact, and as discussed above, the overall results of the ICC/USF Order are in direct conflict with the ability of RoR LECs to meet the goals of universal broadband service.

Instead of being able to rely upon a new USF and ICC regime where support is sufficient and predictable, RoR LECs are faced with more uncertainty than before. Besides the unknown nature of some of the most vital features of the Commission's new regime, including the long-term CAF for RoR carriers; the final reimbursable caps on certain operating and capital expenditures; and changes to the authorized interstate rate of return, RoR LECs now have had a substantial portion of their interstate revenue requirement frozen, are faced with shifting more and more costs to local customers in the face of an increasingly competitive environment, and have very few and highly limited options for recovering costs of major network upgrades of the type made almost mandatory by other Commission decisions. To add on yet another mechanism adverse to RoR LECs' long term ability to recover costs by adopting an accelerated phase-out of the ICC CAF is unreasonable and will further put in jeopardy nationwide attainment of universal broadband service.¹⁷

The Commission's adoption of a one-size-fits-all approach to ICC reform, and the proposal to further limit RoR carrier cost recovery opportunities by placing a defined end date on ICC-related CAF, ignores that fact that RoR carriers operate under widely varying economic, geographic, and operating conditions. While the Commission's adoption of a 5% annual decline

¹⁵ See Rural Association Initial Comments at 31

¹⁶ ICC/USF Order at 848

¹⁷ See February 17, 2012 Reply Comments of Mescalero Apache Telecom, Inc. (MATI) at 2. MATI is owned and operated by the Mescalero Apache Tribe, and provides service exclusively to Tribal areas. MATI states that it will be forced, due to decisions made in the ICC/USF Order, to severely curtail operating and capital expenditures, to the detriment of its customers and to the goal of universal broadband service on Tribal Lands.

in RoR carrier Baseline amounts is based on industry averages¹⁸, the fact remains that RoR LECs can, and often do, make large investments in networks that, during a specific year or a period of several years, increase the interstate revenue requirement. The Rural Associations point this out, and provide an example, in their Initial Comments.¹⁹ The message bears repeating – investment in certain technology conducive, and indeed necessary, in meeting the national broadband goals, is effectively discouraged and penalized by the Commission’s actions.

III. CONCLUSION

The Commission should slow its march to bill and keep and the ultimate abandonment of support for intercarrier compensation. Access revenues have provided valuable resources to RoR LECs and allowed the proliferation of universal voice service, and significant headway to universal broadband service, in difficult and expensive to serve rural areas. While no party is advocating for the status quo as to the intercarrier compensation regime, to completely abandon the regime now will serve only to threaten the overall goal of making vital broadband services available and affordable for all Americans.

RESPECTFULLY SUBMITTED,

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¹⁸ ICC/USF Order at 851

¹⁹ See Rural Association Initial Comments at 32 (investment in a softswitch will result in unrecoverable costs)